

**Rhode Island Department of Environmental Management**

**Office of Administrative Adjudication**

*FY 2000 Workplan  
December, 1999*



## Rhode Island Department of Environmental Management

# Office of Administrative Adjudication 2000 Work Plan

### **I. Program Description:**

The Administrative Adjudication Division for Environmental Matters (AAD) was created by statute during the 1989 session of the General Assembly and is codified in Chapter 17.7 of Title 42 of the General Laws of Rhode Island. AAD is the administrative court for all environmental matters originating from DEM.

### **Permit and License Appeals**

AAD conducts hearings on all appeals filed from the denial of applications for permits or licenses issued by the various divisions within the Department, including, but not limited to, wetlands permits, individual sewage disposal permits, resource recovery facility permits and solid waste licenses. AAD has worked successfully to streamline the license/permit hearing process since its inception in 1990. AAD successfully reduced the backlog and delays associated with permit and licensing appeals. In so doing, AAD established timelines for preliminary conferences which have successfully resulted in resolution of permitting matters without the need for an adjudicatory hearing. When necessary, a prompt administrative hearing is provided. AAD plans to implement initiatives outlined below to further streamline the hearing process for permit appeals.

Absent a request by the appealing party for more time, permit appeals are currently heard within ninety (90) days of the filing of the hearing request. AAD intends to make the decision-making process more efficient and to further streamline the hearing process for permit appeals by

establishing internal guidelines for the completion of recommended decisions on a more expedited basis. This initiative will reduce, by several weeks in some cases, the time required for issuance of a Recommended Decision by the hearing officer.

## **Enforcement Appeals**

AAD plays an integral role in environmental protection and restoration by providing impartial and timely adjudication of administrative enforcement actions initiated by the Department. Efficient and uniform hearings and timely final administrative action contribute substantially to the Department's overall goal of fair and effective enforcement of environmental laws and regulations. Uniform rules of practice and procedure and even-handed adjudications serve to enhance environmental equity and provide a strong deterrent to potential violators.

Absent a mutual request for additional time, an adjudicatory hearing for an enforcement matter is heard within ninety (90) days of the request for hearing. AAD Rules provide for expedited hearings in appropriate cases. AAD will implement internal targets for more expedited completion of recommended decisions in enforcement cases to reduce the overall time required from time of filing of an appeal to the time of final agency action.

## **II. Office Mission Statement:**

To ensure that the regulated community may promptly contest actions taken by a division of the Department of Environmental Management and to have such actions reviewed and resolved at the agency level in a fair, impartial and timely manner in compliance with law and applicable environmental regulations; to provide a forum for non-adversarial resolution of violations and permit denials.

## **III. Office Highlights:**

The following are major highlights and initiatives being implemented by the Administrative Adjudication Division in support of the Department's goals:

- **Mediation of Superior Court Wetlands Cases:** This year, AAD intends to re-establish the pilot mediation program which the Department began in 1997 and which proved to be very successful in resolving pending non-AAD enforcement matters. These are cases awaiting enforcement in Superior Court for non-compliance with existing consent agreements or compliance orders. Office activities will include coordinating with the Office of Legal Services to identify appropriate cases for mediation, assigning an AAD hearing officer to serve as mediator and conduct the mediation sessions and the overall administration of the mediation program. Resolution of these cases through mediation will enhance restoration of altered wetlands and improve voluntary compliance.
- **Mediation of ISDS and Freshwater Wetlands Violations:** AAD will re-institute voluntary mediation of ISDS and Freshwater Wetland cases pending at AAD. Mediation will be conducted by an AAD hearing officer and will provide a non-adversarial means of resolving disputed enforcement cases in a manner that is more expeditious and less resource intensive for private parties and the Department.

- **Permit Streamlining/Swift Enforcement:** In an effort to further streamline the administrative hearing process, AAD will institute internal guidelines for the completion of a Recommended Decision once a hearing has concluded. Currently, decision issuance varies from several weeks to several months. Establishment of internal timelines for the completion of decisions will add a needed performance measure at the end of the administrative process. Prompt decisions streamline the permitting process; aid in effective restoration of altered or contaminated sites; and provide speedy enforcement for those who violate environmental laws and regulations.

#### **IV. Key Objectives and Strategies:**

To meet AAD's mission and concurrently contribute to the Department's goals and strategic plan, three general key objectives are identified below. These key objectives drive AAD's activities, priorities and initiatives.

- To ensure fair and effective environmental regulation and enforcement through impartial adjudication of contested agency actions,
- To adjudicate appeals in a timely fashion by establishing guidelines for the timely processing of contested agency actions and to further streamline the hearing process at the post-hearing stage through implementation of timeframes for Recommended Decisions,
- To channel resources into creating optimal environmental outcomes by focusing on achieving solutions that assure compliance with existing regulations and include voluntary measures in excess of current environmental mandates, and
- To speed the restoration and remediation of air, land and water by minimizing the expenditure of resources on procedural aspects of the appeal process and instead facilitating consensual resolutions through a voluntary alternate dispute resolution process.

<p><b>OBJECTIVE 1:</b>                  Provide an efficient, timely and fair agency appeal process for appeals of agency license, permit and enforcement actions.</p>	<p><b>Environmental Indicators:</b> Improvement in the quality of air, land and water.</p>	
<p><b>STRATEGIES</b></p>	<p><b>ACTIVITIES</b></p>	<p><b>PERFORMANCE MEASURES*</b></p>
<p>Handle permit/license appeals in an expeditious fashion and</p>	<p>Schedule hearings within ninety (90) days of a request for hearing</p>	<p>100% of permit/license matters assigned hearing dates within ninety (90) days of receipt of the request.</p>
<p>Foster an agreed upon, and environmentally sound resolution of permit/license and enforcement matters at preliminary stages of the administrative process and to eliminate unnecessary proceedings where appropriate.</p>	<p>Review of dockets and scheduling of status conferences</p> <p>Establish a control date—an agreed date before which AAD will stay further proceedings—in order to allow the parties to pursue settlement of the appeal before further expense of time and resources</p>	<ul style="list-style-type: none"> <li>• 100% of permit/license appeals are scheduled for a status conference to be held no later than two weeks from receipt of the hearing request to bring opposing sides together to explore settlement.</li> <li>• 100% of enforcement cases are scheduled for a status conference to be held no later than six weeks from receipt of the hearing request to bring opposing sides together to explore settlement.</li> </ul>
<p>Same day assignment of tentative hearing dates and preliminary conferences on all permit/license matters to provide the parties with definitive timeframes and promote settlement.</p>	<p>Daily scheduling of Permit/License appeals</p>	<p>Preliminary conference and hearing dates are established and mailed to the parties within one business day of receipt of the request for hearing in 100% of cases.</p>
<p>Reduce time between close of administrative hearing and issuance of Recommended Decision of hearing officer.</p>	<ul style="list-style-type: none"> <li>• For Permit/License appeals: Recommended Decision of hearing officer forwarded to the Director within six (6) to eight (8) weeks of the receipt</li> </ul>	<p>100% of Decisions issued in abbreviated timeframe</p>

<p>Coordinate and cooperate with Office of Compliance and Inspection and Office of Legal Services to ascertain and document improvement to air, land and water as a result of administrative orders.</p>	<p>of briefs /transcript unless a shorter period is provided for by law. (actual timeframes will vary depending on caseload fluctuation and complexity of the matter)</p> <ul style="list-style-type: none"><li>• For Enforcement appeals: Recommended Decision of hearing officer forwarded to the Director within eight (8) to twelve (12) weeks of receipt of briefs/ transcript unless a shorter period is provided for by law. (actual timeframes will vary depending on caseload fluctuation and complexity of the matter)</li></ul> <p>Quarterly review with Office of Legal Services and Office of Compliance and Inspection for compliance with final administrative orders and to quantify the environmental results achieved.</p>	
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<p><b>OBJECTIVE 2:</b>  <b>Establish a mediation program within the department for non-adversarial resolution of contested agency actions.</b></p>	<p><b>Environmental Indicators</b>          Acceleration of restoration of altered wetlands and decrease of discharges of septic waste and overall improved compliance.</p>	
<p><b>STRATEGIES*</b></p>	<p><b>ACTIVITIES</b></p>	<p><b>Performance Measures*</b></p>
<p>Resume a mediation pilot program begun in 1997 to provide a less costly and less adversarial method by which freshwater wetland and ISDS enforcement appeals can be resolved.</p>	<p>Offer voluntary mediation on all ISDS and freshwater wetland administrative enforcement appeals.</p>	<p>% of voluntary mediation offered</p>
<p>Include non-AAD freshwater wetlands matters awaiting Superior Court enforcement of consent agreements/compliance orders in the mediation process to more expeditiously resolve outstanding enforcement cases.</p> <p>Develop a mechanism for self-evaluation of mediation program in coordination with Office of Legal Services and Office of Compliance and Inspection to assess its effectiveness and cost/resource savings to both the department and the regulated community.</p>	<p>Upon referral from Legal Services, conduct mediation sessions for ten (10) non-AAD freshwater wetlands enforcement matters.</p> <p>By October 30, 1999 meet with the Office of Legal Services and Office of Compliance and Inspection to design and implement plan to evaluate/measure success of mediation program through quarterly review of case dispositions, staff time allocated/saved, and environmental results achieved through mediation.</p>	<p># of non AAD enforcement matters included in mediation process.</p>

Updated January 11, 2000